



April 12, 2001

Ms. Sara Shiplet Waitt  
Senior Associate Commissioner  
Legal & Compliance Division  
Texas Department of Insurance  
P.O. Box 149104  
Austin, Texas 78714-9104

OR2001-1465

Dear Ms. Waitt:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 145974.

The Texas Department of Insurance (the "department") received a request for information relating to Progressive County Mutual Insurance ("Progressive"), including underwriting rules, rating plans, and auto symbols. You inform this office that the department will make some of the requested information available in accordance with Open Records Letter No. 2000-0818 (2000). The department takes no position with respect to the rest of the requested information. You believe, however, that the remaining information may implicate Progressive's proprietary interests. The department notified Progressive of the request for information and of its right to submit arguments to this office as to why that information should not be released. *See* Gov't Code § 552.305(d); Open Records Decision No. 542 (1990) (determining that statutory predecessor to Gov't Code § 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under Public Information Act in certain circumstances). The department also submitted a representative sample of the information at issue to this office.<sup>1</sup>

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<sup>1</sup>This letter ruling assumes that the submitted representative sample of information is truly representative of the responsive information as a whole. This ruling neither reaches nor authorizes the department to withhold any responsive information that is substantially different from the submitted information. *See* Gov't Code § 552.301(e)(1)(D); Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

We have reviewed that information and have considered the comments that were submitted to this office on behalf of Progressive.<sup>2</sup>

We first note that some of the requested auto symbol information may have been the subject of Open Records Letter No. 2000-0818 (2000). But we are unable to ascertain whether or to what extent that ruling encompasses any of the information presently at issue. The department may not now withhold any requested information, the release of which is required by our prior decision. See Gov't Code § 552.301(f); Open Records Decision No. 673 at 6-7 (2001) (delineating criteria for ascertaining whether prior Attorney General decision constitutes previous determination under Public Information Act).

Subject to that qualification, we address Progressive's claim that the information at issue constitutes a trade secret. Section 552.110 of the Government Code protects the proprietary interests of private parties by excepting from public disclosure two types of information: (1) trade secrets, and (2) commercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained. See Gov't Code § 552.110(a), (b). The Texas Supreme Court has adopted the definition of "trade secret" from the Restatement of Torts, section 757, which holds a "trade secret" to be:

any formula, pattern, device or compilation of information which is used in one's business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it. It may be a formula for a chemical compound, a process of manufacturing, treating or preserving materials, a pattern for a machine or other device, or a list of customers. *It differs from other secret information in a business . . . in that it is not simply information as to a single or ephemeral event in the conduct of the business. . . . A trade secret is a process or device for continuous use in the operation of the business . . . .* [It may] relate to the sale of goods or to other operations in the business, such as a code for determining discounts, rebates or other concessions in a price list or catalogue, or a list of specialized customers, or a method of bookkeeping or other office management.

Restatement of Torts § 757 cmt. b (1939) (emphasis added); see *Hyde Corp. v. Huffines*, 314 S.W.2d 763, 776 (Tex. 1958), *cert. denied*, 358 U.S. 898 (1958). If, as is true here, a governmental body takes no position on the application of the "trade secrets" component of

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<sup>2</sup>We note that when Mr. Thompson submitted his letter dated February 26, 2001, to this office on behalf of Progressive, he did not understand the requestor to be seeking access to Progressive's auto symbol information. Mr. Thompson also asserted in that same letter that the symbols "are considered to be trade secret and confidential information and should not be released." By letter dated March 12, the department informed this office of the requestor's confirmation that he is seeking the auto symbol information. Mr. Thompson responded on behalf of Progressive by letter dated March 15.

section 552.110 to requested information, this office will accept a private person's claim for exception as valid if that person establishes a *prima facie* case for the exception and no one submits an argument that rebuts the claim as a matter of law.<sup>3</sup> See Open Records Decision No. 552 at 5 (1990).

In support of its claim that the requested auto symbol information constitutes a trade secret, Progressive argues:

The auto symbols utilized by Progressive have been uniquely developed at great expense to Progressive. Progressive's symbol factors are different than those promulgated by the Texas Department of Insurance and are not available to the public. The symbol factors are protected by Progressive and are not available to anyone outside the company. Progressive has taken all steps to protect its uniquely developed auto symbols as a trade secret.

Upon consideration of Progressive's arguments and careful review of the submitted information, we find that Progressive has demonstrated that the requested auto symbol information qualifies as a trade secret under section 757 of the Restatement of Torts. Therefore, with the exception of any information that the department must release under Open Records Letter No. 2000-0818 (2000), the department must withhold Progressive's auto symbol information from the requestor under section 552.110(a) of the Government Code.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by

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<sup>3</sup>The Restatement of Torts lists the following six factors as indicia of whether information constitutes a trade secret:

- (1) the extent to which the information is known outside of [the company];
- (2) the extent to which it is known by employees and other involved in [the company's] business;
- (3) the extent of measures taken by [the company] to guard the secrecy of the information;
- (4) the value of the information to [the company] and [its] competitors;
- (5) the amount of effort or money expended by [the company] in developing the information;
- (6) the ease or difficulty with which the information could be properly acquired or duplicated by others.

Restatement of Torts, § 757 cmt. b (1939); see also Open Records Decision Nos. 319 at 2 (1982), 306 at 2 (1982), 255 at 2 (1980).

filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

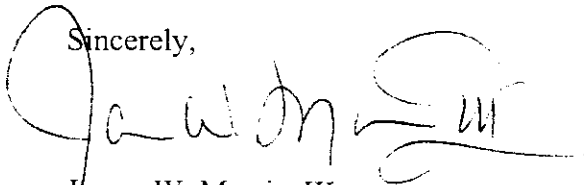
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in dark ink, appearing to read "James W. Morris, III", with a stylized flourish at the end.

James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/er

Ref: ID# 145974

Encl: Submitted documents

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